

SENATE, No. 1011

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED JANUARY 30, 2014

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator JENNIFER BECK

District 11 (Monmouth)

Co-Sponsored by:

Senators Allen, T.Kean, Pennacchio, Singer, Stack, A.R.Bucco and Oroho

SYNOPSIS

Re-establishes moratorium on the imposition of Statewide non-residential development fees until 2016.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/13/2014)

1 AN ACT concerning the imposition of the Statewide non-residential
2 development fee and amending P.L.2008, c.46 and P.L.2009,
3 c.90.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
9 read as follows:

10 37. a. The provisions of this subsection shall not apply to a
11 financial or other contribution that a developer made or committed
12 itself to make prior to the effective date of sections 32 through 38 of
13 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
14 provisions of P.L.2008, c.46 that would permit the imposition of a
15 fee upon a developer of non-residential property shall not apply to:

16 (1) Non-residential property for which a site plan has received
17 either preliminary approval, pursuant to section 34 of
18 P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to
19 section 38 of P.L.1975, c.291 (C.40:55D-50), prior to **July 1,**
20 **2013** January 1, 2016, including, but not limited to the time period
21 between June 30, 2013 and the effective date of P.L. , c.
22 (pending before the Legislature as this bill); provided that a permit
23 for the construction of the building has been issued by the local
24 enforcing agency having jurisdiction, in accordance with section 13
25 of P.L.1975, c.217 (C.52:27D-131), prior to **January** July 1,
26 **2015** 2017;

27 (2) A non-residential planned development which has received
28 approval of a general development plan pursuant to section 5 of
29 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
30 for which the developer has entered into a developer's agreement
31 pursuant to a development approval granted pursuant to P.L.1975,
32 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
33 into a redevelopment agreement pursuant to P.L.1992, c.79
34 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
35 (C.52:27D-329.1 et al.); provided, however, that the general
36 development plan, developer's agreement, redevelopment
37 agreement, or any development agreement pursuant to the
38 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
39 provides that the developer or redeveloper pay a fee for affordable
40 housing of at least one percent of the equalized assessed value of
41 the improvements which are the subject of the development plan,
42 developer's agreement, or redevelopment agreement;

43 (3) A non-residential project that, prior to **July 1, 2013**
44 January 1, 2016, including, but not limited to the time period

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 between June 30, 2013 and the effective date of P.L. , c. (pending
2 before the Legislature as this bill), has been referred to a planning
3 board by the State, a governing body, or other public agency for
4 review pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31);
5 provided that a permit for the construction of the building has been
6 issued by the local enforcing agency having jurisdiction, in
7 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
8 prior to **【January】 July 1, 【2015】 2017**;

9 (4) A non-residential property for which a site plan application
10 has received approval by the New Jersey Meadowlands
11 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
12 14) prior to **【July 1, 2013】 January 1, 2016, including, but not**
13 **limited to the time period between June 30, 2013 and the effective**
14 **date of P.L. , c. (pending before the Legislature as this bill)**;
15 provided that a permit for the construction of the building has been
16 issued by the local enforcing agency having jurisdiction, in
17 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
18 prior to **【January】 July 1, 【2015】 2017**;

19 (5) Individual buildings within a nonresidential phased
20 development that received either preliminary or final approval prior
21 to **【July 1, 2013】 January 1, 2016, including, but not limited to the**
22 **time period between June 30, 2013 and the effective date of P.L. ,**
23 **c. (pending before the Legislature as this bill)**, provided that a
24 permit for the construction of the building has been issued prior to
25 **【January】 July 1, 【2015】 2017**.

26 b. A developer may challenge non-residential development fees
27 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
28 filing a challenge with the Director of the Division of Taxation.
29 Pending a review and determination by the director, which shall be
30 made within 45 days of receipt of the challenge, collected fees shall
31 be placed in an interest bearing escrow account by the municipality
32 or by the State, as the case may be. Appeals from a determination
33 of the director may be made to the tax court in accordance with the
34 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
35 seq., within 90 days after the date of such determination. Interest
36 earned on amounts escrowed shall be credited to the prevailing
37 party.

38 c. Whenever non-residential development is situated on real
39 property that has been previously developed with a building,
40 structure, or other improvement, the non-residential development
41 fee shall be equal to two and a half (2.5) percent of the equalized
42 assessed value of the land and improvements on the property where
43 the non-residential development is situated at the time the final
44 certificate of occupancy is issued, less the equalized assessed value
45 of the land and improvements on the property where the non-
46 residential development is situated, as determined by the tax
47 assessor of the municipality at the time the developer or owner,
48 including any previous owners, first sought approval for a

1 construction permit, including, but not limited to, demolition
2 permits, pursuant to the State Uniform Construction Code, or
3 approval under the "Municipal Land Use Law," P.L.1975, c.291
4 (C.40:55D-1 et seq.). If the calculation required under this section
5 results in a negative number, the non-residential development fee
6 shall be zero.

7 Whenever the developer of a non-residential development has
8 made or committed itself to make a financial or other contribution
9 relating to the provision of housing affordable to low and moderate
10 income households prior to the enactment of P.L.2008, c.46
11 (C.52:27D-329.1 et al.), the non-residential development fee shall
12 be reduced by the amount of the financial contribution and the fair
13 market value of any other contribution made by or committed to be
14 made by the developer. For purposes of this section, a developer is
15 considered to have made or committed itself to make a financial or
16 other contribution, if and only if: (1) the contribution has been
17 transferred, including but not limited to when the funds have
18 already been received by the municipality; (2) the developer has
19 obligated itself to make a contribution as set forth in a written
20 agreement with the municipality, such as a developer's agreement;
21 or (3) the developer's obligation to make a contribution is set forth
22 as a condition in a land use approval issued by a municipal land use
23 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
24 (C.40:55D-1 et seq.).

25 d. Unless otherwise provided for by law, no municipality shall
26 be required to return a financial or any other contribution made by
27 or committed to be made by the developer of a non-residential
28 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
29 329.1 et al.) relating to the provision of housing affordable to low
30 and moderate income households, provided that the developer does
31 not obtain an amended, modified, or new municipal land use
32 approval with a substantial change in the non-residential
33 development. If the developer obtains an amended, modified, or
34 new land use approval for non-residential development, the
35 municipality, person, or entity shall be required to return to the
36 developer any funds or other contribution provided by the developer
37 for the provision of housing affordable to low and moderate income
38 households and the developer shall not be entitled to a reduction in
39 the affordable housing development fee based upon that
40 contribution.

41 e. The provisions of sections 32 through 38 of P.L.2008, c.46
42 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
43 manner as affecting the method or timing of assessing real property
44 for property taxation purposes. The payment of a non-residential
45 development fee shall not increase the equalized assessed value of
46 any property.
47 (cf: P.L.2011, c.122, s.1)

1 2. Section 39 of P.L.2009, c.90 (C.40:55D-8.8) is amended to
2 read as follows:

3 39. The provisions of this section shall apply only to those
4 developments for which a fee was imposed pursuant to sections 32
5 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7),
6 known as the "Statewide Non-residential Development Fee Act."

7 a. A developer of a property that received preliminary site plan
8 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
9 or final approval, pursuant to section 38 of P.L.1975, c.291
10 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
11 payment of a nonresidential development fee prior to the enactment
12 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
13 return of any moneys paid that represent the difference between
14 moneys committed prior to July 17, 2008 and monies paid on or
15 after that date.

16 b. A developer of a non-residential project that, prior to July
17 17, 2008, has been referred to a planning board by the State, a
18 governing body, or other public agency for review pursuant to
19 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
20 to the payment of a nonresidential development fee prior to the
21 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
22 entitled to a return of any moneys paid that represent the difference
23 between moneys committed prior to July 17, 2008 and moneys paid
24 on or after that date.

25 c. If moneys are required to be returned under subsection a., b.
26 or d. of this section, a claim shall be submitted, in writing, to the
27 same entity to which the moneys were paid, within 120 days of the
28 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity
29 to whom the funds were paid shall promptly review all requests for
30 returns, and the fees paid shall be returned to the claimant within 30
31 days of receipt of the claim for return.

32 d. A developer of a non-residential project that paid a fee
33 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
34 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
35 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et
36 al.), shall be entitled to the return of those moneys paid, provided
37 that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6),
38 as amended by P.L.2009, c.90 do not permit the imposition of a fee
39 upon the developer of that non-residential property.

40 e. Notwithstanding the provisions of subsections a., b., c., and
41 d. of this section, if, on the effective date of P.L.2009, c.90
42 (C.52:27D-489a et al.), a municipality that has returned all or a
43 portion of non-residential fees in accordance with subsection a. or
44 b. of this section shall be reimbursed from the funds available
45 through the appropriation made into the "New Jersey Affordable
46 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90
47 (C.52:27D-320.1) within 30 days of the municipality providing
48 written notice to the Council on Affordable Housing.

1 f. A developer of a non-residential project that paid a fee
2 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
3 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
4 but prior to the effective date of P.L.2011, c.122, shall be entitled to
5 the return of those monies paid, provided that said monies have not
6 already been expended by the municipality on affordable housing
7 projects, and provided that the provisions of section 37 of P.L.2008,
8 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit
9 the imposition of a fee upon the developer of that non-residential
10 property. If moneys are eligible to be returned under this
11 subsection, a claim shall be submitted, in writing, to the same entity
12 to which the moneys were paid, within 120 days of the effective
13 date of P.L.2011, c.122. The entity to whom the funds were paid
14 shall promptly review all requests for returns, to ensure
15 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the
16 fees paid shall be returned to the claimant within 30 days of receipt
17 of the claim for return.

18 g. A developer of a non-residential project that paid a fee
19 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
20 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2013
21 but prior to the effective date of P.L. , c. (pending before the
22 Legislature as this bill) shall be entitled to the return of those
23 monies paid, provided that said monies have not already been
24 expended by the municipality on affordable housing projects, and
25 provided that the provisions of section 37 of P.L.2008, c.46
26 (C.40:55D-8.6), as amended by P.L. , c. (pending before the
27 Legislature as this bill) do not permit the imposition of a fee upon
28 the developer of that non-residential property. If monies are
29 eligible to be returned under this subsection, a claim shall be
30 submitted, in writing, to the same entity to which the monies were
31 paid, within 120 days of the effective date of P.L. , c. (pending
32 before the Legislature as this bill). The entity to whom the funds
33 were paid shall promptly review all requests for returns, to ensure
34 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as
35 amended by P.L. , c. (pending before the Legislature as this
36 bill), and the fees paid shall be returned to the claimant within 30
37 days of receipt of the claim for return.

38 (cf: P.L.2011, c.122, s.2)

39
40 3. This act shall take effect immediately.

41
42
43 STATEMENT

44
45 This bill re-establishes the moratorium on the imposition of fees
46 on non-residential construction projects that expired on July 1,
47 2013, and continues the moratorium through December 31, 2015.

1 Under the provisions of the bill municipalities are required to
2 return any monies paid during the time period commencing on July
3 1, 2013 through the effective date of the bill due to the previous
4 expiration of the moratorium. If monies are eligible to be returned
5 under the bill, a developer shall file a claim within 120 days of the
6 bill's effective date and the municipality shall promptly review the
7 claim and return the fee to the developer within 30 days of the
8 claim. However, municipalities that are eligible to collect non-
9 residential development fees would not be required to refund
10 monies that have already been expended by the municipality on
11 affordable housing projects.